

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Ellen Elizabeth (Packenham) Stanley,

Civil No. 19-1582 (DWF/TNL)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

United States of America, doing business
as Social Security Administration,

Defendant.

This matter is before the Court upon *pro se* Plaintiff Ellen Elizabeth (Packenham) Stanley's ("Plaintiff") objections (Doc. No. 32) to Magistrate Judge Tony N. Leung's February 18, 2020 Report and Recommendation (Doc. No. 31) insofar as it recommended that: (1) Defendant's Motion to Dismiss be granted and the matter be dismissed without prejudice for lack of subject matter jurisdiction; (2) Plaintiff's motion for summary judgment be denied; and (3) Plaintiff's motion for default be denied. On February 28, 2020, Plaintiff filed written objections to the Report and Recommendation. (Doc. No. 32.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiff's objections. In the Report and Recommendation, the Magistrate

Judge explained that Plaintiff's motion for default is properly denied because she has not filed an application for entry of default with the Clerk of Court, as required by Rule 55. In considering Defendant's motion to dismiss, the Magistrate Judge applied less stringent pleading standards because Plaintiff is *pro se* and found that Plaintiff had not identified anything in the civil RICO statute, under which Plaintiff's claims arise, suggesting that Defendant has waived sovereign immunity.¹ The Magistrate Judge further noted authority that the Federal Government and its employees are immune from suit under the RICO statute. The Magistrate Judge concluded that the Court does not have subject matter jurisdiction over this case and, therefore, no jurisdiction to consider Plaintiff's motion for summary judgment.

In her written objections, Plaintiff claims that she did satisfy all pertinent requirements under Rule 55 in her request for a Default Judgment. Plaintiff further submits that Defendant is "guilty of illegal racketeering activities perpetrated by Social Security Administration Employees in the appropriation and disbursement of" Plaintiff's benefits. (Doc. No. 32 at 3.) Finally, Plaintiff argues that the United States Attorney's Office failed to defend the SSA, citing the fact that Defendant did not file a reply brief in support of the motion to dismiss. (*Id.*)

¹ The Magistrate Judge noted that in her Complaint, Plaintiff alleges that "specific employees working at the Social Security Administration [the "SSA"] did in fact commit multiple acts violating" the RICO statute. (Doc. No. 1 at 3.) Plaintiff further alleges that the SSA miscalculated and misappropriated her funds related to the reduction of SSA benefits she believes she is owed.

The Court has carefully reviewed the Report and Recommendation and Plaintiff's objections. After that review, the Court finds no reason to depart from the Magistrate Judge's recommendations, which are both factually and legally correct. Based upon the Court's *de novo* review of the record, the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Plaintiff's objections (Doc. No. [32]) to Magistrate Judge Tony N. Leung's February 18, 2020 Report and Recommendation are **OVERRULED**.
2. Magistrate Judge Tony N. Leung's February 18, 2020 Report and Recommendation (Doc. No. [31]) is **ADOPTED**.
3. Defendant's Motion to Dismiss (Doc. No. [12]) is **GRANTED**.
4. Plaintiff's Motion for Summary Judgment (Doc. No. [18]) is **DENIED**.
5. Plaintiff's Motion for Default Judgment (Doc. No. [25]) is **DENIED**; and
6. This case is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 16, 2020

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge